

### **REMARKS/ARGUMENTS**

Claims 1-9, and 15 remain in the application. Claim 1 has been amended by incorporating therein the subject matter found in the specification at page 7, lines 8-9. Claims 10-14 are hereby canceled, based on their non-election in response to a previous restriction requirement.

Claims 1-9 and 15 stand rejected under 35 USC §103(a) as being unpatentable over Perazzo (US 5,043,205) in view of Foster (US 4,535,113).

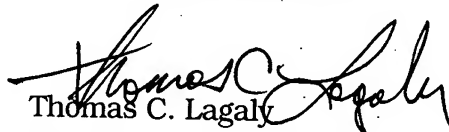
The Examiner takes the position that it would be obvious to employ the siloxane/blended copolymer combination of Foster as the vinyl acetate/acrylate ester copolymer material in the outer layer of Perazzo to make ostomy pouches having improved mechanical and optical properties, based on Foster's teaching of improved mechanical and optical properties for extruded films containing its blends.

In response, Applicant points out that Foster does not disclose the use of its blends in multilayer films, and is completely silent as to the placement of such blends in the outer layer of a multilayer gas and odor barrier film as claimed. Thus, Applicant contends that the above rationale for combining Perazzo and Foster amounts to nothing more than an assertion that it would be 'obvious to try' the blend of Foster in the multi-layer ostomy film of Perazzo. It is well established that a determination of obviousness may not be based on what the skilled person might try or find obvious to try. *In re Dow Chemical Co. v. American Cyanamid Co.*, 5 USPQ2d 1529 (Fed. Cir. 1988); *In re Tomlinson*, 150 USPQ 623 (CCPA 1966); *Yamanouchi Pharmaceutical Co. Ltd. v. Danbury Pharmacal, Inc.*, 56 USPQ2d 1641 (Fed. Cir. 2000).

Moreover, Foster teaches that the "x" and "y" values range from about 4 to about 5,000 (col. 2, lines 36-65). Based on these values, the disclosed silicone additives have a calculated molecular mass of no more than about 25,000. In contrast, the silicone elastomer used in accordance with the present invention has a molecular mass in the range of from about  $3 \times 10^5$  to about  $10^6$  (Applicant's specification at page 7, lines 7-13), which is more than an order of magnitude greater than the silicone additives of Foster. In order to clarify this aspect of the invention, claim 1 has been amended to specify that silicone elastomer has a molecular mass in the range of from about  $3 \times 10^5$  to about  $10^6$ . This feature is neither taught nor suggested in Foster. Accordingly, Applicant submits that claim 1 as amended is patentably distinct from the combination of Perazzo and Foster for this additional reason.

For all of the foregoing reasons, Applicant respectfully submits that the claims as now presented are patentable over the art of record and in condition for allowance. A Notice of Allowance is earnestly solicited.

Respectfully submitted,

  
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